

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9279 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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ANJANI TEXTILE

Versus

UNION OF INDIA

Appearance:

MR PARESH M DAVE for Petitioner
MR ASIM J PANDYA for Respondents No. 1 to 3.
MR UDAY M JOSHI for Respondent No. 4, 5

CORAM : MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

Date of decision: 07/12/98

ORAL JUDGEMENT (Per A.L. Dave, J.)

1. Rule. Mr. Asim Pandya waives service on behalf of respondents No.1 to 3 and Mr. Uday Joshi waives service on behalf of respondents No.4 and 5. With the consent of the parties, the matter is taken up today for final hearing.

2. We have heard Mr. Dave for the petitioner, Mr. Pandya for respondents No.1 to 3 and Mr. Joshi for respondents No.4 and 5.

3. The facts leading to the present petition are that the present petitioner is a textile trader, who has been working at E-2318-19, STM, Surat, since January 1995. Earlier that premises was occupied by respondent No.5-Alwyn Silk Mills. It also transpires that Alwyn Silk Mills had some dealings with respondent No.4-Sunsilk Dyeing and Printing Mills Pvt. Ltd., which is a process house. It was noticed by the Excise Department that duty payable on some of the goods supplied by respondent No.4 to respondent No.5 was not paid and in that case, investigations were carried out. The officers visited the premises E-2318-19, STM, Surat, in February 1995 and around that time, an amount of Rs.81,339/- was paid by the petitioner to the Department by a crossed Account Payee cheque.

4. The case of the petitioner is that the said amount was not due from them, but was, in fact, due from Alwyn Silk Mills, which was recovered from them by the Department under coercion, although this aspect has been denied to by the Department in their affidavit in reply.

5. We have been taken through various documents by Mr. Dave to indicate that the case of the petitioner is correct that the amount of Rs.81,339/- was not due from the petitioner, although that has been paid by the petitioner. The petitioner, therefore, sought refund of the said amount from respondents No.1 to 3 and the respondents denied to refund the amount on the ground that the claim is time barred (Annexure-E). This has given rise to the petition.

6. After having heard all the learned advocates for parties, the fact emerges is that there is no dispute about the fact that amount of Rs.81,339/- was paid by the petitioner to the Department; that the said amount was not due from the petitioner by way of any duty payable; and the refund was claimed on 29th September, 1998 (Annexure-D) for the said amount, which has been denied by the Department.

7. Without entering into the merits, it has been stated on behalf of respondent No.4 that, without prejudice to their rights to agitate their liability, they are prepared to deposit the amount in question, i.e. Rs.81,339/- with the Department and that they have no

objection, if the said amount is paid by the Department to the petitioner.

8. Mr. Pandya appearing for the Department states that the Department has no objection in making over the said amount to the petitioner after the amount is deposited with the Department by respondent No.4.

9. We are not oblivious of the fact that in such matter the Court should be slow in exercising its powers under Article 226 of the Constitution. However, keeping in light the peculiar facts of this case and keeping in light the decision of the Hon'ble Supreme Court in the case of Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536, we pass the following order :-

Respondent No.4 shall deposit Rs.81,339/- with respondent No.3 within four weeks from today and after the said amount is deposited, respondent No.3 shall pay the said amount to the petitioner. It is clarified that payment of the said amount by respondent No.4 will not, in any way, affect the rights and contentions of all parties. The amount will be refunded without any interest. Rule is made absolute accordingly with no order as to costs.

[C.K. THAKKAR, J.]

[A.L. DAVE, J.]

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